

FEDERAL EMPLOYEES COMPENSATION ACT

Inequities in Existing Law and in Proposed Legislation

1. Under the current provisions of the Federal Employees Compensation Act, dollar payments of compensation to disabled workers or to survivors of employees who die in the performance of duty are limited to a maximum of \$525 a month. This limit was established in 1949 and at the time assured take-home pay to disabled workers in grades through GS-15. Over the years, however, with Federal pay legislation increasing salary levels with no consequent adjustment of the FECA maximum of \$525, the level of employees covered with no impairment of net take-home pay has steadily reduced to the point where now, generally, only employees at a salary level of \$8,820 (GS-9, Step 8; GS-10, Step 5; GS-11, Step 2) and below are fully covered. Employees in salary levels from about \$9,000 (GS-11, Step 3) and above suffer increasing loss of take-home pay because of the \$525 limitation. The effect has been to deny employees in the middle management and executive level a comparable percentage of the compensation authorized by the FECA. Consequently, the need to correct this discrimination toward employees in grade GS-11 to GS-15 and supergraders has been felt for many years. It can be accomplished only by corrective legislation.

2. It should be noted that the FECA provides payment of compensation to disabled workers at the rate of $\frac{2}{3}$ or $\frac{3}{4}$ of their gross pay, or,

in death cases, to their survivors at specific percentages. Yet, when these percentages are applied to employees in the middle and upper income levels, the amounts would exceed the present maximum dollar limitation. However, when only the maximum can be paid, these employees are denied the benefit specified by the Congress in the percentage entitlements. As in the case of the current maximum of \$525, the proposed maximum of \$685 still discriminates against the middle and upper income levels.

3. Section 4 of H.R. 4478 has taken cognizance of the inequity toward the middle and higher income levels and would, if enacted, eliminate the maximum limitation. The significant effect of this proposal would be to treat all Federal employees who are injured, taken ill, or who die in the performance of duty equally by applying the authorized percentage, 2/3 or 3/4 of their gross pay; or in survivorship cases specific percentages for surviving widows and minor children, against base salary and payment of that amount. This bill would also avoid the need to periodically correct the maximum limitation by additional legislation at some future time.

On the other hand, H.R. 10721, while presumably acknowledging the inequity caused by the inadequate current maximum of \$525, makes only a gesture toward correcting the inequity. Section 203 of that bill proposes an increase in the maximum limitation from the current level of \$525 per

month to \$685 per month. However, the new limitation of \$685 per month covers adequately only employees earning \$10,960 a year or the equivalent of GS-11, Step 8 or GS-12, Step 3. This proposal would perpetuate the present discriminatory effect currently being felt by employees in the middle management and executive levels.

4. In disability and death cases, the employee or his survivors are forced to dramatically reduce their standard of living because of the arbitrary setting of a maximum which is significantly less than their take-home pay. Yet, employees who are hardest hit by the current and the proposed maximum are those generally in the "hard to get" category. For example, scientists, pilots, and other professional type of employees. It is felt that an important inducement in recruiting these skilled professional employees would be an assurance that in the event of their disability or death in the performance of duty, they or their survivors would be assured of at least an adequate standard of living, generally comparable to the one to which they have become accustomed. The inability to grant this assurance hampers recruitment especially in those instances where the offered employment is of a hazardous nature.

5. One other problem stems from an inadequate maximum limitation. Because of improvements in salary levels over the past years, employees

who qualify for disability retirement or survivors who qualify for death benefits under the provisions of the Civil Service Retirement Act may soon find that their benefits under that Act are greater than those which the Congress specifically meant to be granted under the FECA for performance of duty situations. The FECA has been one way of distinguishing those employees who are disabled or who die from job-connected causes from those stemming from non-job connected causes. A more generous maximum limitation or removal of a maximum limitation entirely would fulfill the Congressional intent to single out employees disabled or who die in the performance of duty by providing these employees with a different benefit schedule.

Recommendations:

- a. To eliminate a dollar maximum altogether, or as an alternative.
- b. To increase the dollar maximum to a figure that would assure employees through GS-18 of their take-home pay. A \$1,500 maximum limitation would generally accomplish this, or
- c. Increase the maximum to \$1,000 that would generally cover employees through GS-15 and apply a reasonable sliding scale that would minimize loss of take-home pay by the higher income levels.

under any Federal retirement program. This recommendation can be effected by the addition of the following language to either H.R. 4478 or H.R. 10721:

(1) The first sentence of Section 7(a) of the Federal Employees Compensation Act is amended by placing a comma after "Civil Service Retirement Act" and inserting the following: "or any other Federal Act or program providing retirement benefits for employees."

(2) The first sentence of Section 9(a) of the Federal Employees Compensation Act is amended by inserting the following phrase after "Civil Service Retirement Act": "or any other Federal Act or program providing retirement benefits for employees."

7. The existing statute /Section 7(a) and 9(a)/ permits Civil Service annuitants to receive their Civil Service Annuities and certain FECA benefits, i.e., medical care and supplies and scheduled awards, concurrently. To explain, Federal employees may retire by reason of age and service or for reasons of disability unrelated to the performance of duty. In those instances where retired employees may have incurred a job-connected illness or injury in the past, the need for medical care could continue during the period of their retirement or they could, when retired, become entitled to a scheduled award, which is the payment of compensation under the FECA for specific anatomical losses or certain other losses of members of the body or function. Current law allows employees to receive these FECA benefits while at the same time receiving their Civil Service annuity. Employees who have retired under other Federal retirement systems such as the Foreign Service Retirement System and the CIA Retirement System are not accorded the same benefits only because of an apparent oversight. There seems no basis to discriminate against Federal employees who are retired under retirement systems other than the Civil Service Retirement Act.

Recommendations:

Section 7(a) and 9(a) be amended to include employees retiring

, 8 JUN 1965

Mr. Arthur B. Focke
General Counsel
Bureau of the Budget
Executive Office Building
Washington, D. C.

Dear Mr. Focke:

This is with reference to the draft legislation submitted by the Department of Labor to amend the Federal Employees Compensation Act (FECA) to increase the maximum limitation of benefits provided under the Act and for other purposes.

We have reviewed the proposed legislation with much interest. In deleting the maximum dollar limitation this bill would correct a serious deficiency in the existing law which now operates to the detriment of employees in the middle and higher grade levels.

This Agency strongly supports this legislation and would be pleased to help facilitate its enactment in any way, consistent with Agency security considerations.

Sincerely,

s/ Lawrence R. Houston

Lawrence R. Houston
General Counsel

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STATEMENT IN EXPLANATION OF THE
"FEDERAL EMPLOYEES COMPENSATION ACT
AMENDMENTS OF 1965"

INTRODUCTION

The draft bill would provide needed improvements in the Federal Employees' Compensation Act by --

- (1) making its benefit levels more reasonable and fair in terms of general economic conditions and the needs of Federal employees;
- (2) providing certain revisions in the Act which will facilitate its administration.

Improved benefit levels provided by the bill include the elimination of the maximum monthly compensation rate of \$525, and an increase in the minimum monthly compensation rate from \$180 to \$210. Provision is also made for an automatic escalation of the minimum compensation rate whenever there is a general pay raise for Federal employees. A similar escalation is authorized with respect to previous compensation awards.

In survivor cases, the bill would authorize the continuation of benefits to unmarried children after the age of 18 up to age 23 for educational purposes. The bill also permits payments to such children who have reached their eighteenth birthday prior to the effective date of this Act, until they reach the age of twenty-three.

The bill would also permit employees receiving benefits under the various Federal retirement systems to receive scheduled awards.

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IMPROVEMENTS IN BENEFITS

Elimination of Present Maximum and Increase of Minimum
Compensation and Authority for Future Increases

The present dollar maximum of \$525 a month was established in 1949. Between 1949 and 1964 Government earnings have increased 80% and over this period the C.P.I. shows an increase of 30%. Manifestly, the maximum of \$525 does not carry out the intent of the Act that employees generally may receive up to 75% of their basic compensation if they are totally disabled. This proposal corrects this situation by removing the present dollar maximum.

The Compensation Act now provides a minimum compensation amount of \$180 per month and that totally disabled employees whose monthly pay is less than this amount shall be entitled to their full pay. The bill would increase this amount to \$210 a month, approximately the same as the minimum wage under the FLSA. The minimum was increased in 1960 to the present amount. With today's living costs, it is believed that employees making \$210 a month or less would not be able to subsist on 75% of their earnings and that, therefore, their entire earnings should be paid during total disability. Only a few thousand blue collar employees fall within a wage bracket so low they would be affected by this provision. The minimum rate for employees under the Classification Act, GS-1, step 1, is \$3385, or approximately \$210 a month, a much higher figure than the blue collar minimum.

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Future automatic increases in the minimum compensation are authorized in relation to general pay raises on the basis of the average percentage increase in the rate of pay the Secretary of Labor finds to have been authorized by the raises.

The Secretary is granted this authority because of the fact that there are a number of different methods used by Federal agencies to arrive at an average Federal pay increase percentage figure. These methods generally result in slight variations. It is important, therefore, that the Secretary be allowed to proceed to estimate and put the increase in effect without the delays which may be involved in reconciling slightly varied figures.

ILLEGIB

✓ The concept of a general pay raise is intended to mean those raises which include the four major statutory salary systems for Federal employees. These are the Classification, postal employees, Foreign Service and the Department of Medicine and Surgery of the Veterans' Administration.

Increase of Compensation Under Previous Awards

The last increase authorized for previously adjudicated compensation awards was for injuries occurring prior to January 1,

1958. The bill amends the Act so as to authorize compensation under previous awards on a basis which is more consistent with present Federal pay levels and in line with the intent of this proposal to maintain in the future a correlation between pay levels and compensation benefits. Inasmuch as the amount of an employee's "monthly compensation" (i.e., monthly pay) is determinative of the amount of a compensation award under the Act, it is necessary to redefine that term to accomplish this objective. As redefined by the bill, "monthly compensation" means the pay rate which the Secretary determines to be currently applicable to the job in which the employee was working at the time he became entitled to compensation. The bill also authorizes the Secretary to recompute previously awarded compensation benefits as of January 1 of the year following the year in which this proposal was enacted and as of January 1 of each calendar year following a year in which a general pay raise for Federal employees has become effective.

Authority to Continue Benefits on Account of Surviving Children
for School Attendance

The bill also permits in survivor cases the continuation of benefits to unmarried children after the age of 18 if they are attending school. At present, payment of these benefits is terminated at age 18 unless the beneficiaries are disabled. This age occurs when most children are finishing high school, many of whom may wish to enter college. The increased family financial need

could be alleviated and education encouraged if the survivor payment continues until such time as the child could normally finish college (i.e., the age of 23). To prevent inequities with respect to children who have reached their eighteenth birthday prior to the effective date of this Act and who might otherwise qualify for the continuation of benefits, the bill authorizes payment of compensation on account of or to such child until he reaches his twenty-third birthday or completes his education, whichever is earlier. This amendment would also bring the Compensation Act in line with a similar program of the Veterans Administration for continuation of benefits to war orphans. The continuation of compensation for education reasons is not only dictated by principles of justice and equity, but is socially and economically desirable in our society which regards the education of offspring as one of a breadwinner's primary responsibilities.

Scheduled Compensation Awards Authorized for Retirees under Various Federal Retirement Systems

The compensation Act was amended in 1960 to permit scheduled awards (for permanent partial injuries) to be received by employees receiving Civil Service Retirement Act benefits. The bill would extend this right to other employees who are subject to the FECA and to other Federal retirement systems of which there are a number.

Maximum Allowance for Attendants

The bill also increases from \$125 a month to \$250 the maximum attendant's allowance for totally disabled employees who are helpless.

The allowance may be authorized by the Secretary in cases of great need. The present allowance of \$125 a month is inadequate to obtain the services of responsible and competent attendants. The recommended increase to \$250 a month would authorize a payment of slightly more than \$1.25 an hour for a forty-hour week, a wage equivalent to the minimum rate required under the Fair Labor Standards Act.

IMPROVEMENTS IN ADMINISTRATIVE PROVISIONS

A technical amendment is proposed to transfer a substantive item from the Department of Labor Appropriations Act to the Compensation Act. For many years, the appropriations acts of the Department have provided that the rule-making authority of the Secretary of Labor under the Federal Employees' Compensation Act be construed to include the authority to establish the nature and extent of proofs and evidence required in compensation claims of certain noncitizens and nonresident employees employed outside the United States.

As a perfecting amendment, the bill eliminates the provision of section 6(a)(1) of the Act which limits the payment of additional compensation for dependents to the first \$420 of an employee's basic compensation. If this were not done, the authorized percentage of augmentation would in some instances be insufficient to permit a beneficiary to receive the maximum otherwise authorized by the amendments.

A B I L L

To amend the Federal Employees' Compensation Act to improve its benefits, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

TITLE I - SHORT TITLE

SEC. 101. This Act may be cited as the "Federal Employees' Compensation Act Amendments of 1965."

TITLE II - IMPROVEMENTS IN BENEFITS

Repeal of Augmented Compensation Limit

SEC. 201. Section 6(a)(1) of the Federal Employees' Compensation Act, as amended, is amended by striking the last part thereof, beginning with "provided" (a proviso establishing a limit for computing augmented compensation for dependents), and inserting in lieu thereof a period.

Maximum Allowance for Attendants

SEC. 202. Section 6(b)(1) of the Federal Employees' Compensation Act is amended by striking "\$125 a month" (for services of an attendant for totally disabled employee) and inserting in lieu thereof "\$250 a month."

Elimination of Present Maximum and Increase of
Minimum Compensation and Authority for Future
Increases

SEC. 203. Section 6(c) of the Federal Employees' Compensation Act is amended to read as follows:

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"(c) Except as otherwise authorized under Section 42, the minimum rate of compensation in cases of total disability shall be \$210 per month. Whenever a general pay raise is authorized by Congress for Federal employees, the minimum shall be increased at the same time by the average percentage increase in the rate of pay as found by the Secretary of Labor to be authorized by such raise. If an employee's monthly pay is less than the minimum, his monthly rate of compensation for total disability shall be equal to his full monthly pay."

SEC. 204. Section 10(K) of the Federal Employees' Compensation Act is amended to read: "(K) In computing compensation under this section the monthly pay shall be considered not to be less than \$280."

Authority to Continue Benefits on Account of
Surviving Children for School Attendance

SEC. 205. Paragraph (C) of Section 10 (authorizing compensation for children) is amended by adding the following new sentence: "However, as approved by the Secretary and under regulations prescribed by him, compensation payments on account of a child or to a child under any provision of this section, may be extended after his eighteenth birthday to permit him to continue his education until he completes the education or reaches the age of twenty-three, whichever is earlier. Payments of such compensation may be made on account of or to any unmarried child who prior to the effective date of the Federal Employees' Compensation Act Amendments of 1965 has passed his eighteenth birthday (and for whom compensation was being paid prior thereto) but who has

not reached his twenty-third birthday nor completed his education by such date.

SEC. 206. The third sentence of section 10(H) of the Federal Employees' Compensation Act (defining "child") is amended by changing the period after "self-support" to a comma, and adding the following: "or on whose account or to whom compensation may be continued under Section 10(C) of this Act to permit them to continue their education or training."

Scheduled Compensation Awards Authorized for Retirees

SEC. 207. The first sentence of Section 7(a) of the Federal Employees' Compensation Act is amended by placing a comma after "Civil Service Retirement Act" and inserting the following: "or any other Federal Act or program providing retirement benefits for employees."

SEC. 208. The first sentence of Section 9(a) of the Federal Employees' Compensation Act is amended by inserting the following phrase after "Civil Service Retirement Act": "or any other Federal Act or program providing retirement benefits for employees."

Secretary's Rule-Making Authority in Employment Outside the United States

SEC. 209. Section 32 of the Federal Employees' Compensation Act is amended by adding the following: "In the adjudication of claims under section 42 of this Act, the Secretary shall have the authority to determine the nature and extent of the proofs and evidence required to establish the right to benefits under this Act without regard to the date of the injury or death for which claim is made."

SEC. 210. Section 40(f) of the Act is amended to read: "The term monthly pay shall be taken to refer to the monthly pay rate determined by the Secretary to be currently applicable to the Government employment in which the employee was working at the time of the injury, or at the time compensable disability begins or death occurs, or at the time such disability recurs, whichever is greater, except when otherwise determined under section 6(d) with respect to any period. The Secretary is hereby authorized to recompute the monetary compensation payable for disability or death, as of January 1 of the year following the date of enactment of this Act and as of January 1 of each calendar year following a year in which a general pay raise for Federal employees has become effective: Provided, That nothing in this or any other Act of Congress shall be construed to make the increase in the monthly pay provided by this section applicable to military personnel or to any person or employee not within the definition of section 40(b)(1) or (2) of the Federal Employees' Compensation Act, except that this section shall apply to employees of the government of the District of Columbia other than members of the police and fire departments who are pensioned or pensionable under the provisions of the Policemen and Firemen's Retirement and Disability Act."

TITLE III - EFFECTIVE OPERATION

✓ SEC. 301. The provisions of this Act shall be applicable to cases of injury or death occurring before or after the date of its enactment only with respect to any period beginning on or after the first day of the first calendar month following date of such enactment.